

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 11-237—HB 6595

Appropriations Committee

Judiciary Committee

AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

SUMMARY: This act changes how the Commission on Human Rights and Opportunities (CHRO) handles discrimination complaints.

It provides an automatic legal review of complaints dismissed during the merit assessment review process, except when the complainant has requested a release from jurisdiction. If a complaint is not dismissed after the merit review process, or dismissed but then reinstated after the legal review, the act requires a mandatory mediation conference within 60 days. If the complaint is not resolved through mandatory mediation, the act allows for a request of early legal intervention.

The act allows CHRO's executive director to recommend that an investigator find that there is no reasonable cause to believe that discrimination has occurred and specifies when the investigator must follow that recommendation. It specifies that a reasonable cause investigation may include any lawful method of fact-finding.

The act requires that a reconsideration request must state specifically why it should be granted, and narrows the reasons for allowing someone to make such a request. It adds to the reasons that CHRO can dismiss a complaint or enter a default order against a respondent.

The act decreases the time period that a discrimination complainant must wait to request a release of jurisdiction from CHRO from 210 to 180 days, allowing complainants who wish to proceed in court to begin the process sooner. It makes other changes regarding when CHRO must or may grant a release from jurisdiction.

The act makes changes regarding the required recipients, form, and timing of various CHRO notices, including (1) requiring CHRO to notify respondents (i.e., the people accused of discrimination) of any determination or proceeding relating to the complaint and (2) eliminating certain certified mail requirements.

The act makes various changes regarding petitions brought to court to enforce CHRO orders. Among other changes, it (1) allows all such petitions to be brought in the Hartford judicial district, (2) eliminates the requirement that CHRO file a complete transcript of the administrative proceedings, (3) eliminates the court's discretion to modify the administrative award, and (4) repeals provisions allowing the court to order additional evidence to be presented to the presiding officer in certain circumstances.

The act allows CHRO attorneys to be involved in proceedings alleging retaliation for making a whistleblower complaint.

The act prohibits attorney's fees in specified situations from being contingent

on the amount of damages requested by or awarded to the complainant.

The act makes additional changes regarding housing discrimination. For example, it (1) eliminates the requirement that a CHRO commissioner concur with the attorney general or CHRO legal counsel before they can seek specified remedies in a housing discrimination case brought after a reasonable cause finding and (2) allows the complainant to intervene as a matter of right in such cases.

The act also makes various minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2011

§ 2 — WHISTLEBLOWER COMPLAINTS

The act allows CHRO's executive director, through the supervising attorney, to assign CHRO legal counsel to represent CHRO in any hearing or appeal on complaints by an employee of a state or quasi-public agency or large state contractor that action has been threatened or occurred in retaliation for whistleblowing (e.g., reporting corruption).

§ 6 — PROCEDURE AFTER FILING A DISCRIMINATION COMPLAINT WITH CHRO

Method of Service

Prior law provided that, within 20 days of receiving or issuing a complaint alleging discrimination (or an amendment to the complaint adding an additional respondent), CHRO had to serve the complaint on the respondent, together with a notice informing the respondent of his or her procedural rights and obligations and identifying the alleged discriminatory practice. The act specifies that the complaint and notice can be sent by first class mail, fax, electronic mail, or a file transfer protocol site, and eliminates the requirement that the notice identify the alleged discriminatory practice (which should appear in the complaint itself).

Merit Assessment Review (MAR) and Legal Review of Complaints Dismissed After MAR

By law, within 90 days of receiving the respondent's answer to the complaint, CHRO's executive director or his or her designee must review the case file. The act conforms to current practice by calling this review the merit assessment review (MAR).

By law, the executive director or designee must dismiss a complaint after this review if he or she determines that (1) the complaint does not state a claim for relief, is frivolous on its face, or there is no reasonable possibility that investigating it will result in a finding of reasonable cause (see below) or (2) the respondent is exempt from the antidiscrimination laws over which CHRO has jurisdiction. Under the act, when CHRO dismisses a complaint in this manner, it must send a notice of dismissal to both the complainant and respondent (see below). Prior law required that the notice be sent only to the complainant.

The act permits a complainant, within 15 days of CHRO sending a notice of

dismissal after the MAR, to request a release of CHRO's jurisdiction, allowing the complainant to bring a lawsuit. If the complainant does not request a release of jurisdiction, CHRO legal counsel must conduct a legal review of any complaint dismissed after the MAR. In that case, within 60 days of CHRO's sending the notice of dismissal, CHRO legal counsel must reinstate the complaint or deny reinstatement. The executive director or designee must notify both the complainant and respondent of any action taken pursuant to the MAR or the legal review.

By law, different procedures apply to complaints alleging housing discrimination.

Mandatory Mediation

Under prior law, if a complaint was not dismissed after the MAR, CHRO's executive director or designee had to determine how to proceed. The options included mandatory mediation, expedited or extended fact-finding conferences, complete investigations, or any combination of these for fact-finding purposes, promoting the voluntary resolution of complaints, or determining if there was reasonable cause for believing that a discriminatory practice has been or was being committed.

The act makes mediation mandatory if a complaint is (1) not dismissed after the MAR or (2) is dismissed but then reinstated following the legal review by CHRO attorneys. The mediation can be conducted by an investigator or CHRO legal counsel, and the initial mediation conference must be held within 60 days of CHRO sending notice of the action taken pursuant to the MAR or legal review. The act specifies that the mandatory mediation conference may be scheduled to coincide with the fact-finding conference described below. It also provides that (1) either the complainant or respondent can request additional mediation sessions and (2) the mediator has the discretion to hold additional mediation sessions to try to reach a settlement. The act eliminates a provision specifying that a mediator may recommend, but not order, a resolution of the complaint.

Early Legal Intervention and Reasonable Cause Investigation

The act allows either party or the commission to request early legal intervention for complaints that are not resolved after the mandatory mediation conference. In that case, CHRO's executive director or designee must determine within 90 days whether (1) the complaint should receive a hearing according to law, (2) the complaint should be referred to an investigator to determine if there is reasonable cause to believe that discrimination has occurred, or (3) the complainant should be released from CHRO's jurisdiction, allowing him or her to bring a lawsuit. The act specifies that, in making this determination, the executive director or designee may hold additional proceedings and use CHRO staff.

The act allows the executive director or designee, when deciding that a complaint should be referred to an investigator for a reasonable cause determination, to recommend to the investigator that he or she make a finding of no reasonable cause. In that case, the act requires the investigator to make such a finding, unless the investigator believes the executive director or designee made a

mistake of fact. An investigator must consult with the executive director or designee if the investigator intends to make a reasonable cause finding contrary to the recommendation.

Under the act, when a complaint is not resolved after the mandatory mediation conference, or the executive director determines that the complaint should be referred to an investigator for a reasonable cause determination, the executive director or his designee must assign an investigator to process the complaint within 15 days after the mediation conference. The investigator may conduct a fact-finding conference, a complete investigation, or both, in making the reasonable cause determination. The act specifies that a complete investigation may include any lawful means of fact-finding, such as witness interviews, requests for voluntary information disclosure, subpoenas of witnesses or documents, requests for admission of facts, interrogatories, and site visits.

Dismissal of Complaint for Failure to Attend Fact-Finding Conference

The act allows the executive director or designee to dismiss a complaint if a complainant fails, without good cause, to attend a fact-finding conference after being notified of it. The act retains other grounds under prior law for a complaint to be dismissed at this stage—i.e., (1) similarly failing to attend a mandatory mediation conference or (2) the respondent has eliminated the discriminatory practice identified in the complaint, taken steps to prevent a similar future occurrence, and offered the complainant full relief, even though the complainant refused it.

Reconsideration Request

Prior law allowed a complainant to request reconsideration from CHRO within 15 days of the issuance of a finding of no reasonable cause, or dismissal for specified reasons. The act specifies that the request for reconsideration must be in writing, and must specifically state the reasons why reconsideration should be granted.

The act continues to allow complainants to request reconsideration after a finding of no reasonable cause, but changes and narrows the reasons for dismissal that allow someone to request reconsideration. It allows someone to do so only for dismissals for failing, without good cause, to attend a fact-finding conference after the person was notified of it. Prior law allowed someone to request reconsideration if the complaint was dismissed due to (1) failure to state a claim for relief, (2) the complaint was frivolous on its face, (3) the respondent was exempt from the antidiscrimination laws over which CHRO has jurisdiction, (4) there was no reasonable possibility that investigating would result in a reasonable cause finding, (5) the complainant's failure, without good cause, to attend a mandatory mediation session after being notified of it, or (6) the respondent has eliminated the discriminatory practice identified in the complaint, taken steps to prevent a similar future occurrence, and offered the complainant full relief, even though the complainant refused it.

Order of Default Against Respondent

The act adds to the reasons the executive director or his designee can enter an order of default against a respondent by allowing such an order of default if the respondent, after notice and without good cause, fails to attend a fact-finding conference.

Housing Discrimination Complaints

Under prior law, after an investigator found reasonable cause that housing discrimination had occurred, either party to the complaint had 20 days after receiving notice of that finding to request a court resolution rather than an administrative hearing. The act changes this to 20 days after CHRO sends the reasonable cause finding.

In such a lawsuit, prior law allowed injunctive relief, punitive damages, or a civil penalty to be sought if the attorney general or a CHRO legal counsel, and a CHRO commissioner, believed it would be appropriate. The act eliminates the requirement of a commissioner's concurrence.

In such cases, the act allows a complainant to intervene as a matter of right, without permission of the court or parties. If the complainant intervenes, the complainant or his or her attorney can present all or part of the case in support of the complaint if the attorney general or CHRO legal counsel determines that doing so would not adversely affect the state's interests.

§§ 5, 7, & 14 — RELEASE FROM CHRO JURISDICTION

§ 7 — When Release Must or May Be Granted After Certain Dismissals

Prior law required the executive director to issue a release from CHRO's jurisdiction, allowing the complainant to bring a court action within 90 days of the release, if the complaint was dismissed for specified reasons and the complainant did not request reconsideration. Under the act, for complaints dismissed after the MAR as required by law (e.g., for failure to state a claim for relief), the executive director must grant a release of jurisdiction only if the complainant requests a release within 15 days of the sending of the dismissal notice. The act also requires the executive director to grant a release if the complainant does not request such a release in that situation and CHRO legal counsel denies reinstatement of the complaint following a legal review. In either case, the requirement only applies if the complainant does not request reconsideration.

The act deletes a provision allowing the executive director to grant a release from CHRO's jurisdiction when the complainant requests it, the complaint was dismissed after the MAR as required by law, and the complainant requested reconsideration.

§ 14 — Time Period to Request Release From Jurisdiction

The act decreases the time period that a complainant must wait to request a release of jurisdiction from CHRO. Prior law provided that the complainant had to wait at least 210 days from the date the complaint was filed. The act requires a complainant to wait at least 180 days from the date of the complaint's filing or the MAR, whichever is earlier. It also allows a complainant and respondent to jointly

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request a release at any time, rather than only within 210 days from the complaint's filing.

The act also requires CHRO's executive director or his designee to conduct an expedited MAR if CHRO receives a request for a release from jurisdiction from the complainant or complainant's attorney before 180 days have passed since the complaint was filed.

Generally, the law requires CHRO's executive director to authorize the complainant to sue if a request is submitted as provided above. The executive director may decline to issue a release if a case is scheduled for public hearing. He may also defer acting on the request for 30 days if he certifies that he has reason to believe that the complaint will be resolved within that time.

§ 5 — Form of Notice for Complaints Pending More Than 21 Months

Under prior law, if a complaint was pending for more than 21 months and CHRO had not issued a finding of reasonable cause or no reasonable cause, the executive director had to send a notice by certified mail, return receipt requested, advising the complainant of his or her right to request a release to bring a civil action. The act eliminates the requirement that this notice be sent by certified mail, instead allowing it to be sent by first class mail, fax, electronic mail, or a file transfer protocol site.

§§ 9 & 15 — ATTORNEY'S FEES

The law allows CHRO to award attorney's fees after a hearing upon a finding of specified types of discrimination. It also allows a court to award attorney's fees in cases alleging discriminatory conduct brought by a complainant who obtained a release to sue from CHRO. The act prohibits the amount of attorney's fees in either situation from depending on the amount of damages requested by or awarded to the complainant.

§ 10 — NOTICE OF CHRO DETERMINATIONS

The law requires CHRO to inform a complainant of any finding, closure, dismissal, or other determination or proceeding concerning the complaint. The act also requires CHRO to notify respondents of any such determination or proceeding.

Prior law required this notice to be sent by mail. The act allows the notice to be sent by first class mail, fax, electronic mail, or a file transfer protocol site.

§ 12 — COURT ENFORCEMENT

The act allows petitions to enforce CHRO orders and for temporary relief to be brought in the Hartford judicial district, regardless of where the discriminatory practice occurred or where the person charged with discrimination lives or transacts business.

Prior law required CHRO to certify and file in the court a transcript of the entire record of the proceedings sought to be enforced, including the pleadings

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and testimony and the findings and orders of the presiding officer. The act requires CHRO to certify and file with the court the officer's order as part of the petition or if ordered to do so by the court. It eliminates the requirement that CHRO file a transcript of the entire record of the proceedings and makes conforming changes.

Under prior law, within five days of CHRO filing such a petition in court, CHRO had to send a notice of it by registered or certified mail, to all parties or their representatives. The act provides that either CHRO or the complainant can serve the notice. They must file an affidavit with the court, stating the date and manner of service regarding each party.

Prior law provided that the court had the power to grant such relief as it deemed just and suitable, by injunction or otherwise. The act specifies that the court must grant such relief.

The act eliminates the court's discretion to modify the presiding officer's award. It provides that any remand by the court must be limited to clarifying any ambiguity in the relief ordered. It also specifies that the court retains jurisdiction over the order while the presiding officer is complying with the remand.

It requires the court to order a noncompliant party to comply immediately with the presiding officer's order, unless the ordered relief is ambiguous. It also requires the court to award enforcement costs to CHRO or the complainant, including reasonable attorney's fees.

The act deletes a provision allowing a court to consider an objection that was not presented to the presiding officer when the failure to present it was excused due to extraordinary circumstances. It also specifies that petitions to enforce a presiding officer's order are limited to resolving whether the presiding officer's ordered relief is sufficiently clear to enforce. Such petitions are not considered to be an appeal of, or collateral attack on, the presiding officer's order.

The act eliminates provisions allowing (1) the court to order additional evidence to be presented to the presiding officer and made part of the transcript under specified circumstances and (2) the presiding officer to modify his factual findings, or make new findings, due to such additional evidence. It also eliminates a provision specifying that a presiding officer's factual findings are conclusive if supported by substantial and competent evidence.

Prior law provided that the court's judgment and decree was final in cases to enforce CHRO orders, although the parties could appeal. The act specifies that cases remanded as provided above are an exception to this general rule of finality. It also makes minor and technical changes in the provisions specifying that such decrees can be appealed to the Appellate Court.

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